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**DOCKET FILE COPY ORIGINAL**

**September 11, 1998**

**Hon. Magalie Roman Salas**  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Rm 222  
Washington, D.C. 20554

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**Re: In the Matter of the Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996**  
**CC Docket No. 98-146**

**Dear Secretary Salas:**

The New York State Department of Public Service (NYDPS) submits this letter in response to the August 7, 1998 Notice of Inquiry (NOI) inviting comments on the deployment of advanced telecommunications capability to all Americans pursuant to Section 706 of the Telecommunications Act of 1996 (the Act). Our comments address the role that regulators should play to promote deployment of advanced telecommunications services, as required under the Act. Our comments also provide information on initiatives in New York designed to promote advanced telecommunications capability.

The NYDPS generally endorses the Commission's efforts to obtain information relevant to the current need for, and status of, the deployment of advanced telecommunications capabilities. The competitive marketplace, however, should be allowed to develop in response to consumer demand for advanced technology, free from regulatory barriers.

Efforts to establish "time-specific schedules or objective targets" to ensure reasonable and timely deployment of advanced services should be developed only in the event the market fails to respond to consumer demand in specific market

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areas. In fulfilling our duty under the Act to promote the deployment of advanced telecommunications capability, regulators should not mandate any particular investment plan, technology, or architecture. Instead, we should focus on whether consumer needs are being adequately anticipated and met.<sup>1</sup> For example, in New York, we monitor the network modernization plans of each local exchange carrier.<sup>2</sup> Recent reviews of these filings reveal no discernable evidence of significant unmet demand for advanced telecommunications capability. Moreover, in evaluating the need for regulatory intervention, we believe that the capabilities of alternative facilities network providers, such as, cable, satellite, wireless and micro-wave (as well as electric utilities) should be considered.<sup>3</sup>

Consistent with the requirements of §706, the NYDPS continues to adopt policies that promote competition and encourage market driven deployment of advanced telecommunications services. Since the early 1990's, for example, the NYDPS has used price cap regulation to help encourage infrastructure investment in response to competitive pressures. We have also approved a specialized incentive plan to meet the technology needs of underserved areas. Specifically, we approved a "Diffusion Fund" in the New York Telephone Company incentive plan requiring the company to allocate \$50 million to extend advanced telecommunications services to areas of the state unlikely to receive such services if left to competitive market forces.<sup>4</sup> Also, the NYDPS has approved a schools and libraries discount

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<sup>1</sup> See, New York Public Service Commission Opinion 94-7, Case 91-C-0485 Proceeding on Motion of the Commission to Evaluate New York Telephone Company's Network Modernization Plans (Issued March 14, 1994).

<sup>2</sup> Since incumbent local exchange carriers (ILECs) do not account for all network modernization in the state, the NYDPS has required competitive local exchange carriers (CLECs) to file annual construction budget information as well.

<sup>3</sup> Deployment options for advanced telecommunications services are not limited to the technology of wireline carriers or the existing public switched network. Alternative facilities network providers may also facilitate the deployment of advanced telecommunications services to consumers: wireless, technologies, cable television facilities, and even the telecommunications equipment of electric utilities may provide other options for deployment of advanced technology.

<sup>4</sup> New York Public Service Commission Opinion 95-13, Case 92-C-0665 Performance-Based Regulatory Plans for New York Telephone Company - Track II (Issued and Effective August 16, 1995).

Hon. Magalie Roman Salas

September 11, 1998

CC Docket No. 98-146

New York Department of Public Service Comments

plan designed to ensure that consumers benefit from the federal program for bringing advanced telecommunication services to schools and libraries.

In conclusion, the NYDPS supports the Commission's inquiry into the deployment of advanced telecommunications capabilities; but we urge that state and federal actions rely primarily on market forces to help define and then meet the demand for advanced technologies.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Malone". The signature is fluid and cursive, with a large, stylized "M" at the end.

Lawrence G. Malone  
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of the State of New York  
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Enclosure

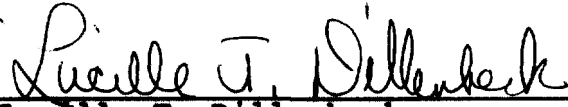
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cc: See Attached Service List

In the Matter of the Inquiry Concerning the Deployment of  
Advanced Telecommunications Capability to All Americans In a  
Reasonable and Timely Fashion and Possible Stepsz to Accelerate  
Such Deployment Pursuant to Section 706 of the Telecommunications  
Act of 1996 - CC Docket No. 98-146

CERTIFICATE OF SERVICE

I, Lucille T. Dillenbeck, hereby certify that an original and  
four (4) copies of comments in the above-captioned proceeding  
were sent via Airborne Express to Magalie Roman Salas, Secretary  
to the Federal Communications Commission. In addition, copies  
were sent by First Class Mail, postage prepaid, to all parties on  
the attached service list.

  
Lucille T. Dillenbeck

Dated: September 11, 1998  
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